

1  
2  
3  
4  
5  
6                   UNITED STATES DISTRICT COURT  
7                   WESTERN DISTRICT OF WASHINGTON  
8                   AT SEATTLE

9  
10  
11 DIALLO MAMADOU,

Petitioner,

v.

12 A. NEIL CLARK,

Respondent.

13                   CASE NO. C08-1343-JLR-BAT

14                   REPORT AND RECOMMENDATION

15                   I. INTRODUCTION AND SUMMARY CONCLUSION

16                   Diallo Mamadou (“petitioner”) is a native and citizen of the Republic of Congo who is  
17 currently detained by the U.S. Immigration and Customs Enforcement (“ICE”) at the Northwest  
18 Detention Center in Tacoma, Washington. On September 8, 2008, petitioner, proceeding pro se,  
19 filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241, requesting that the Court  
20 order a “pre removal bond hearing,” stating that he was “willing to pay a reasonable bond and be  
21 on supervised release.” (Dkt. 5 at 1). On October 22, 2008, however, petitioner filed a “Petition  
22 for expedited removal,” requesting that the Court “alter this petition from being a request for a  
23 bond hearing and instead issue an order to expedite petitioner’s removal . . .” (Dkt. 10 at 1). On  
24 November 14, 2008, respondent filed a Return and Status Report, Motion to Dismiss, and  
25 Response to Petitioner’s Motion for Expedited Removal, arguing that petitioner is lawfully

1 detained in the removal period pursuant to Section 241 of the Immigration and Nationality Act  
2 (“INA”), 8 U.S.C. § 1231, pending his removal to the Republic of Congo. (Dkt. 11).

3 Having carefully reviewed the entire record, I recommend that petitioner’s habeas petition  
4 (Dkt. 5) and Motion for Expedited Removal (Dkt. 10) be DENIED and that respondent’s motion  
5 to dismiss (Dkt. 11) be GRANTED.

6           II. BACKGROUND AND PROCEDURAL HISTORY

7           The instant Petition for Writ of Habeas Corpus is the third habeas petition that petitioner  
8 has filed in this Court challenging his continued detention. *See Diallo v. Clark*, Case No. C07-  
9 1613-MJP; *Diallo v. U.S. Immigration and Customs Enforcement*, Case No. C-07-125-TSZ. The  
10 factual and procedural background of this case is related in the previously issued R&R’s.  
11 Accordingly, the Court will not repeat it here. However, a brief summary of the history of this case  
12 following the dismissal of the prior habeas petitions follows.

13           On September 8, 2008, petitioner filed the instant habeas petition, challenging his  
14 continued detention without bond pending adjudication of his Petition for Review in the Second  
15 Circuit Court of Appeals. (Dkt. 5). On October 8, 2008, however, the Second Circuit dismissed  
16 petitioner’s Petition for Review. *See Diallo v. Mukasey*, No. 07-5233 (2<sup>nd</sup> Cir. 2008). On October  
17 22, 2008, petitioner filed a “Petition for expedited removal,” requesting that the Court order his  
18 “immediate removal” from the United States. (Dkt. 10). On October 31, 2008, the Second Circuit  
19 mandate issued, thereby commencing the removal period. *See Diallo v. Mukasey*, No. 07-5233 (2<sup>nd</sup>  
20 Cir. 2008). On November 14, 2008, respondent filed a Return and Status Report, Motion to  
21 Dismiss, and Response to Petitioner’s Motion for Expedited Removal, arguing that petitioner is  
22 lawfully detained pending his removal from the United States. (Dkt. 11). Petitioner filed a  
23 response, requesting that the Court order ICE to remove him by January 9, 2009. (Dkt. 13).

### III. DISCUSSION

“When a final order of removal has been entered against an alien, the Government must facilitate that alien’s removal within a 90-day ‘removal period.’” *Thai v. Ashcroft*, 366 F.3d 790, 793 (9<sup>th</sup> Cir. 2004)(citing *Xi v. INS*, 298 F.3d 832, 834-35 (9<sup>th</sup> Cir. 2002)); INA § 241(a)(1)(A), 8 U.S.C. § 1231(a)(1)(A). The removal period begins on the latest of the following:

- (i) The date the order of removal becomes administratively final.
  - (ii) If the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court's final order.
  - (iii) If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.

8 U.S.C. § 1231(a)(1)(B)(emphasis added); see also *Khotesouvan v. Morones*, 386 F.3d 1298, 1300 n.3 (9<sup>th</sup> Cir. 2004) (stating that the 90-day removal period commences on “the date the order of removal becomes final; the date a reviewing court lifts its stay following review and approval of the order of removal; or the date the alien ordered removed is released from non-immigration related confinement.”). During the removal period, continued detention is required. INA § 241(a)(2), 8 U.S.C. § 1231(a)(2) (“During the removal period, the Attorney General shall detain the alien.”). Where removal cannot be accomplished within the ninety-day removal period, detention beyond the removal period is authorized by INA § 241(a)(6), 8 U.S.C. § 1231(a)(6); see *Zadvydas v. Davis*, 533 U.S. 678, 682, 121 S. Ct. 2491, 150 L. Ed. 2d 653 (2001). In *Zadvydas*, the Supreme Court determined that the government is entitled to a presumptively reasonable period of detention of six months to bring about the alien’s removal from the United States. *Zadvydas*, 533 U.S. at 701. After this six month period, the alien is eligible for conditional release upon demonstrating that there is “no significant likelihood of removal in the reasonably foreseeable future.” *Id.* The petitioner has the burden of coming forward with “good reason to believe there is

1 no significant likelihood of removal in the reasonably foreseeable future.” *Id.* If the petitioner  
2 meets this burden, the government must produce sufficient evidence to rebut petitioner’s showing.  
3 *Id.*

4 In the present case, the Second Circuit dismissed petitioner’s Petition for Review on  
5 October 8, 2008, and the mandate issued on October 31, 2008, thereby commencing the removal  
6 period. *See* INA § 241(a)(1)(B)(ii), 8 U.S.C. § 1231(a)(1)(B)(ii). Therefore, petitioner’s ninety-  
7 day removal period will expire on or about January 31, 2008, and the six month presumptively  
8 reasonable period will expire on or about April 30, 2008. As respondent argues, there is no  
9 authority for this Court to order “expedited” removal. The government has already submitted a  
10 travel document request to the Republic of Congo and does not anticipate any difficulties in  
11 obtaining a travel document for petitioner’s removal in the reasonably foreseeable future. (Dkts.  
12 11 and 12). Accordingly, petitioner’s detention is lawful, and the Court must deny habeas relief.  
13 *See Zadvydas*, 533 U.S. at 701.

14                          IV. CONCLUSION  
15

16 For the foregoing reasons, I recommend that respondent’s motion to dismiss be granted,  
17 and that the action be dismissed. A proposed Order accompanies this Report and  
18 Recommendation.

19 DATED this 16<sup>th</sup> day of December, 2008.  
20

21   
22 \_\_\_\_\_  
23 BRIAN A. TSUCHIDA  
24 United States Magistrate Judge  
25  
26